

## **IC 8-1.5-5**

### **Chapter 5. Department of Storm Water Management**

## **IC 8-1.5-5-1**

### **Application of chapter**

Sec. 1. This chapter applies to each municipality that adopts the provisions of this chapter by ordinance.

*As added by P.L.125-1987, SEC.1.*

## **IC 8-1.5-5-2**

### **"Board" defined**

Sec. 2. As used in this chapter, "board" means the following:

- (1) For a consolidated city, the board of public works established by IC 36-3-5-6.
- (2) For all other municipalities, the board of directors described in section 4 of this chapter.

*As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.3; P.L.98-1993, SEC.1.*

## **IC 8-1.5-5-3**

### **"Department" defined**

Sec. 3. As used in this chapter, "department" means the following:

- (1) For a consolidated city, the department of public works.
- (2) For all other municipalities, the department of storm water management established under section 4 of this chapter.

*As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.4; P.L.98-1993, SEC.2.*

## **IC 8-1.5-5-3.5**

### **"District" defined**

Sec. 3.5. As used in this chapter, "district" means the special taxing district established by section 5 of this chapter.

*As added by P.L.93-1993, SEC.5 and P.L.98-1993, SEC.3.*

## **IC 8-1.5-5-4**

### **Board of storm water management; directors**

Sec. 4. (a) This section applies to all municipalities except a consolidated city.

(b) If the legislative body of a municipality adopts the provisions of this chapter by ordinance, a department of storm water management is established and is controlled by a board of directors.

(c) Except as provided in subsection (f), the board consists of three (3) directors. The executive of the municipality shall appoint the directors, not more than two (2) of whom may be of the same political party.

(d) Except as provided in subsection (f), the legislative body shall prescribe, by ordinance, the terms of the directors. However, the legislative body must prescribe the initial terms of the directors so that they will be staggered.

(e) The executive may remove a director at any time when, in the

judgment of the executive, it is for the best interest of the department.

(f) If a second class city has a department of public sanitation under IC 36-9-25, the executive of the city may appoint the members of the board of sanitary commissioners as the board of directors of the department of storm water management. The terms of the members of the board of directors are the same as the terms of the members of the board of sanitary commissioners under IC 36-9-25-4.

(g) A member of the board of directors of the department of storm water management appointed under subsection (f) is not entitled to a salary for serving as a member of the board of directors of the department of storm water management. However, a member shall be reimbursed for necessary expenses incurred by the member in the performance of official duties.

*As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.6; P.L.98-1993, SEC.4; P.L.5-1998, SEC.1.*

### **IC 8-1.5-5-5**

#### **Special taxing district**

Sec. 5. (a) The legislative body shall, in the ordinance adopting the provisions of this chapter, create a special taxing district that includes the following:

(1) For a consolidated city, all of the territory of the county containing the consolidated city.

(2) For all other municipalities, all territory within the corporate boundaries of the municipality.

(b) As to each municipality to which this chapter applies, including a consolidated city, all the territory within the district constitutes a special taxing district for the purpose of providing for the collection and disposal of storm water of the district in a manner that protects the public health and welfare and for the purpose of levying special benefit taxes for purposes of storm water collection and disposal. All area in the district and all area added to the district is considered to have received a special benefit from the storm water collection and disposal facilities of the district equal to or greater than the special taxes imposed on the area by this chapter in order to pay all or part of the costs of such facilities.

*As added by P.L.125-1987, SEC.1. Amended by P.L.93-1993, SEC.7; P.L.98-1993, SEC.5.*

### **IC 8-1.5-5-6**

#### **Powers of board**

Sec. 6. (a) The board has the powers and duties prescribed by IC 8-1.5-3-4(a). In addition, the board may:

(1) hold hearings following public notice;

(2) make findings and determinations;

(3) install, maintain, and operate a storm water collection and disposal system;

(4) make all necessary or desirable improvements of the grounds and premises under its control; and

(5) issue and sell bonds of the district in the name of the municipality for the acquisition, construction, alteration, addition, or extension of the storm water collection and disposal system or for the refunding of any bonds issued by the board.

(b) The board has exclusive jurisdiction over the collection and disposal of storm water within the district.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-7**

##### **Financing of facilities; user fees**

Sec. 7. (a) The acquisition, construction, installation, operation, and maintenance of facilities and land for storm water systems may be financed through:

- (1) proceeds of special taxing district bonds of the storm water district;
- (2) the assumption of liability incurred to construct the storm water system being acquired;
- (3) service rates;
- (4) revenue bonds; or
- (5) any other available funds.

(b) The board, after approval by the legislative body of the municipality, may assess and collect user fees from all of the property of the storm water district for the operation and maintenance of the storm water system.

(c) The collection of the fees authorized by this section may be effectuated through a periodic billing system or through a charge appearing on the semiannual property tax statement of the affected property owner.

*As added by P.L.125-1987, SEC.1. Amended by P.L.176-2002, SEC.6.*

#### **IC 8-1.5-5-8**

##### **Fixing and setting aside revenues**

Sec. 8. The board may fix and set aside:

- (1) revenues of the department necessary for reasonable and proper operation and maintenance;
- (2) revenues for a proper and adequate depreciation account; and
- (3) revenues to be applied to the payment of the principal and interest of the authorized bonds.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-9**

##### **Maintenance account; surplus**

Sec. 9. (a) In fixing the revenues of the department required for operation and maintenance, the board shall consider the cost of the operation and maintenance of the department.

(b) If a surplus is accumulated in the operating and maintenance account, the board may transfer any excess over that surplus to:

- (1) the depreciation account, to be used for any improvements,

- extensions, or additions to the storm water system; or
- (2) the bond and interest redemption account.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-10**

##### **Bond and interest redemption account; surplus**

Sec. 10. (a) The revenues set aside for the payment of the principal and interest of the authorized bonds shall be deposited and credited to a special account identified as "the bond and interest redemption account".

(b) In determining the amount that is to be set aside for the payment of the principal and interest of the authorized bonds, the board may provide that the amount to be set aside and paid into the bond and interest redemption account for any year or years should not exceed a fixed sum, which must be at least sufficient to provide for the payment of the interest and principal of the bonds maturing and becoming payable in each year.

(c) If a surplus is created in the bond and interest redemption account, the board may transfer any excess over the surplus to:

- (1) the operation and maintenance account; or
- (2) the depreciation account.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-11**

##### **Depreciation account; use of revenues**

Sec. 11. The revenues set aside to the depreciation account shall be expended for:

- (1) the repair of the storm water system;
- (2) new acquisition, construction, extensions, or additions to the property of the storm water system; or
- (3) transfer to the bond and interest redemption account to prevent a default.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-12**

##### **Board or municipality assumption of storm water system; bonds in satisfaction of liability assumed**

Sec. 12. (a) If the board acquires a storm water system and assumes the liability incurred by the seller to construct the storm water system, the principal and interest on the liability so assumed shall be paid from the bond and interest redemption account in the same manner as bonds of the district would be paid, and the board shall set aside sufficient revenues to comply with the requirements of the instrument creating the liability.

(b) A municipality acquiring a storm water system may not assume any liability for the payment of a secured debt or charge other than the obligation to apply the revenues in the manner prescribed in the ordinance.

(c) The board may issue bonds in exchange for, or satisfaction of, the liability assumed in the acquisition of a storm water system. The

bonds so issued may not be issued at less than ninety-seven percent (97%) of the par value thereof in exchange for, or satisfaction of, the liability. Notwithstanding section 13(c) of this chapter, bonds issued in exchange for, or satisfaction of, the liability need not be sold in accordance with IC 5-1-11. However, the interest rate on such bonds may not exceed the average yield on municipal revenue bonds of comparable credit rating and maturity as of the end of the week immediately preceding the issuance of the bonds.

*As added by P.L.125-1987, SEC.1.*

### **IC 8-1.5-5-13**

#### **District bonds; nature**

Sec. 13. (a) The bonds of the district are:

(1) a valid claim of the holders only against the bond and interest redemption account and the revenues of the storm water system; and

(2) exempt from taxation in Indiana as provided by IC 6-8-5.

(b) The bonds may be issued either as registered bonds or as coupon bonds payable to the bearer.

(c) Except as provided in this chapter or IC 5-1-5, bonds shall be sold in accordance with IC 5-1-11. The registration of bonds does not affect negotiability.

*As added by P.L.125-1987, SEC.1.*

### **IC 8-1.5-5-14**

#### **Bond issue**

Sec. 14. A board acquiring a storm water system and paying for it and for extensions and betterments authorized at the time of acquisition may provide for the combined cost in one (1) issue of bonds. The board shall issue and secure the bonds in the manner provided in this chapter to provide funds for the original construction of a storm water system.

*As added by P.L.125-1987, SEC.1.*

### **IC 8-1.5-5-15**

#### **Use of bond proceeds; actions to compel performance; actions upon default**

Sec. 15. (a) All money received from bonds issued under this chapter shall be applied solely to the acquisition, construction, repair, and maintenance of the storm water system, the cost of the issuance of the bonds, and the creation of any reserve for the bonds.

(b) Any holder of the bonds may bring a civil action to compel performance of all duties required by this chapter of the board issuing the bonds or of any officer of the board, including the following:

(1) Making and collecting reasonable and sufficient user fees lawfully established for service rendered by the storm water system.

(2) Segregating the income and revenues of the department.

(3) Applying the respective funds created under this chapter.

(c) If there is any default in the payment of the principal or interest of any of the bonds, a court having jurisdiction of the action may:

(1) appoint an administrator or receiver to administer the storm water system on behalf of the municipality and the bondholders, with power to:

(A) charge and collect user fees lawfully established sufficient to provide for the payment of the operating expenses and also to pay any bonds or obligations outstanding against the storm water system; and

(B) apply the income and revenues in conformity with this chapter and the ordinance; or

(2) declare the whole amount of the bonds due and payable and direct the sale of the storm water system.

Under a sale ordered under subdivision (2), the purchaser is vested with an indeterminate permit as defined in IC 8-1-2-1 to maintain and operate the storm water system to collect and dispose of storm water for the municipality and its citizens.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-16**

##### **Charge for services; deposit of funds**

Sec. 16. (a) The reasonable cost and value of any service rendered to the municipality by the storm water system by furnishing storm water collection and disposal shall be:

(1) charged against the municipality; and

(2) paid for in monthly installments as the service accrues out of the:

(A) current revenues of the municipality, collected or in process of collection; and

(B) tax levy of the municipality made by it to raise money to meet its necessary current expenses.

(b) The compensation for the service provided to the municipality shall, in the manner prescribed by this chapter, be treated as revenues of the system and paid into the funds created under this chapter.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-17**

##### **Proposed projects; resolution; notice to property owners; preadoption contracts for purchase**

Sec. 17. (a) If, upon investigation, the board finds that:

(1) the storm water system is insufficient to furnish the necessary collection and disposal of storm water to properly protect the public health and welfare and safeguard the property within the district; or

(2) it is necessary to acquire, construct, rebuild, repair, extend, and improve the storm water system and equipment, to acquire lands, or to construct, erect, or acquire other systems and other structures and equipment appurtenant to them;

the board shall prepare maps, plans, specifications, and drawings

with full details and descriptions for the proposed work, together with an estimate of the cost. The board shall also prepare a description of all property rights necessary to be acquired in connection with the proposed work and the manner in which the rights are to be acquired, whether by purchase or appropriation, along with a description of any other property that may be injuriously affected, together with the estimated cost.

(b) The board shall then adopt a resolution approving the project by:

- (1) declaring that it is necessary for the protection of the public health and welfare of the inhabitants of the storm water district and the safeguarding of the property within the district;
- (2) declaring that it is of public utility and benefit;
- (3) appropriating the property described in the resolution;
- (4) stating the maximum proposed cost of any land to be purchased; and
- (5) adopting plans, maps, specifications, drawings, details, descriptions, and estimates.

(c) If the resolution is adopted, the board shall publish a notice in accordance with IC 5-3-1 of the adoption of the resolution and of the fact that plans, specifications, and estimates have been prepared and can be inspected. The notice must also name a date, not less than ten (10) days after the date of the last publication, when the board will receive or hear remonstrances from the persons interested in, or affected by, the resolution, and when it will determine the public utility and benefit of the project. Notice shall be mailed to the owners of all property appropriated by the resolution. If a landowner is a nonresident and the landowner's place of residence is known, a notice shall be mailed to the nonresident owner. If the nonresident owner's residence is unknown to the board, then the owner is considered notified of the pendency of the proceedings by the publication of notice.

(d) Separate descriptions of each piece or parcel of land are not required in the resolution and notice, but it is a sufficient description of the property purchased or to be purchased, or to be appropriated or damaged, to give a description of the entire tract, whether it is one (1) or more lots or parcels and whether it is owned by one (1) or more persons.

(e) All persons affected by the proceedings, including all taxpayers in the storm water district, are considered to be notified of the proceedings and all subsequent acts, hearings, adjournments, and orders of the board by the original publication of notice.

(f) The board may, before adoption of the resolution, obtain from the owners of the property an option for its purchase or may enter into a contract for its purchase after an appraisal by two (2) qualified land appraisers. An option or contract is subject to the final action of the board confirming, modifying, or rescinding the resolution.

*As added by P.L.125-1987, SEC.1.*

### **Remonstrances**

Sec. 18. (a) At the time fixed for the hearing or before the hearing, the following persons may file a written remonstrance with the board:

- (1) The owner of real property, rights-of-way, or other property to be appropriated under the resolution.
  - (2) A person injuriously affected by the appropriation.
  - (3) A person owning real or personal property within the storm water district.
- (b) The board shall:
- (1) hear all persons interested in the proceedings;
  - (2) hear all the remonstrances that have been filed; and
  - (3) take action to confirm, modify, or reject the resolution.

*As added by P.L.125-1987, SEC.1.*

### **IC 8-1.5-5-19**

#### **Appeal**

Sec. 19. (a) A person who has remonstrated in writing and is aggrieved by the decision of the board may, within thirty (30) days, take an appeal to the circuit or superior court of the county in which the storm water district is located.

(b) A remonstrator desiring to appeal the action of the board shall, within thirty (30) days after the final action of the board, file in the office of the clerk of the circuit or superior court a copy of the order of the board and the remonstrance, together with a bond conditioned to pay the costs of the appeal, should the appeal be determined against the remonstrator.

(c) The court may hear the appeal only if the question is whether the board acted arbitrarily or capriciously in adopting the resolution.

(d) The cause shall be tried by the court without a jury.

(e) All remonstrances upon which appeals are taken may be consolidated and heard as one (1) claim for relief by the court.

*As added by P.L.125-1987, SEC.1.*

### **IC 8-1.5-5-20**

#### **Appropriation in name of municipality**

Sec. 20. All real property, rights-of-way, or other property acquired by purchase or appropriation shall be taken and held in the name of the municipality.

*As added by P.L.125-1987, SEC.1.*

### **IC 8-1.5-5-21**

#### **Bonds for proposed work projects**

Sec. 21. (a) To procure money to pay for the required property and the acquisition, erection, and construction of the proposed work, and in anticipation of the collection of the special benefit tax, the board may issue, in the name of the municipality, special taxing district bonds of the storm water district. The bonds may not exceed the total estimated cost of the work and property to be acquired as provided for in the resolution, including:



- (1) all expenses necessarily incurred for supervision and inspection during the period of construction; and
- (2) expenses actually incurred preliminary to the acquiring of the necessary property and the construction of the work, including the cost of records, engineering expenses, publication of notices, salaries, and other expenses incurred, before and in connection with the acquiring of the property, the letting of the contract, and the sale of bonds.

(b) After adopting a resolution authorizing the bonds, the board shall certify a copy of the resolution to the municipal fiscal officer, who shall then prepare the bonds. The municipal executive shall execute the bonds, and the fiscal officer shall attest the bonds.

(c) The board may not issue bonds of the storm water district, payable by a special benefit property tax, when the total of the outstanding bonds of the district that are payable from a special benefit property tax, including the bonds already issued and to be issued, exceeds eight percent (8%) of the total adjusted value of taxable property in the district as determined under IC 36-1-15. For purposes of this section, bonds are not considered to be outstanding bonds if the payment has been provided for by an irrevocable deposit in escrow of government obligations sufficient to pay the bonds when due or called for redemption.

(d) The bonds are not a corporate obligation or indebtedness of the municipality but are an indebtedness of the storm water district. The bonds and interest are payable:

- (1) out of a special benefit tax levied upon all of the property of the storm water district; or
- (2) by any other means including revenues, cash on hand, and cash in depreciation or reserve accounts.

(e) The bonds must recite the terms upon their face, together with the purpose for which they are issued.

*As added by P.L.125-1987, SEC.1. Amended by P.L.6-1997, SEC.132.*

## **IC 8-1.5-5-22**

### **Special benefit tax**

Sec. 22. (a) To raise the necessary revenues to pay for the bonds issued and the interest on the bonds, the board:

- (1) after approval by the legislative body of the municipality, shall levy a special benefit tax upon all the property of the storm water district in the amount necessary to meet and pay the principal of the bonds as they severally mature, together with all accruing interest; and
- (2) shall certify the tax levied each year to the fiscal officers of the municipality and of the county in which the storm water district is located, at the same time the levy of the municipality is certified.

The tax levied and certified shall be estimated and entered upon the tax duplicate and shall be collected and enforced in the same manner as state and county taxes are estimated, entered, and enforced.

(b) In fixing the amount of the necessary levy, the board:

(1) shall consider the amount of revenues derived by the board from the operation of the storm water system under its jurisdiction above the amount of revenues required to pay the cost of operation and maintenance of the storm water system; and

(2) may, in lieu of making the levy in this section, set aside by resolution a specific amount of the surplus revenues to be collected before maturity of the principal and interest of the bonds payable in the following calendar year.

(c) The special tax shall be deposited in the bond and interest redemption account.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-23**

##### **Municipal approval of bond issuance; applicability of IC 6-1.1-20**

Sec. 23. (a) The board may not issue any bonds authorized by this chapter until it has secured the approval for the issuance of the bonds from the legislative body of the municipality.

(b) IC 6-1.1-20 applies to the issuance of bonds under this chapter which are or may be payable from the special benefit property tax.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-24**

##### **Combined sanitary sewer and storm water system projects**

Sec. 24. (a) Whenever work on a storm water system (that is combined with a sanitary sewer system) necessitates the repair or replacement of all or part of a sanitary sewer system, the entity that owns or maintains the sanitary sewer system shall assume a proportionate share of the cost of repairing or replacing the sanitary sewer system.

(b) The board and the entity that owns or manages the sanitary sewer system shall negotiate the division of the costs described in subsection (a).

(c) If the parties cannot agree to a division of the costs, they shall petition the circuit court of the county where the majority of the systems are located to divide the costs. The circuit court shall hold a hearing on the division of costs within sixty (60) days after receiving the petition. The court shall publish notice of the hearing in accordance with IC 5-3-1. The decision of the court is binding on both parties.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-25**

##### **Use of bond payment revenues; pledge of user fees; reductions in fees**

Sec. 25. (a) Revenues received by the department may be used to pay for bonds issued to acquire, construct, install, operate, and maintain facilities and land for storm water collection and disposal systems.

(b) If there are bonds outstanding for which user fees were pledged, the board may not rescind user fees or reduce them below a rate that would produce one hundred twenty-five percent (125%) of the highest annual debt service on the bonds issued under this chapter to their final maturity, based on an average of the immediately preceding three (3) years of user fee collections, if the user fees have been levied for the preceding three (3) years. If the user fees have not been levied for the preceding three (3) years, the board may not reduce user fees below a rate that would produce one hundred twenty-five percent (125%) of the highest debt service, based upon a study by a qualified public accountant or financial adviser.

*As added by P.L.125-1987, SEC.1.*

#### **IC 8-1.5-5-26**

##### **User fee pledges; effect of amendments or repeal of chapter**

Sec. 26. With respect to bonds for which a pledge has been made under section 25 of this chapter, the general assembly covenants with the holders of these bonds that:

(1) this chapter will not be repealed or amended in a manner that will adversely affect the imposition or collection of the user fees under this chapter; and

(2) this chapter will not be amended in a manner that will change the purpose for which revenues from the user fees imposed under this chapter may be used;

as long as those bonds are outstanding.

*As added by P.L.125-1987, SEC.1.*